

REMARKS

Applicant respectfully requests favorable reconsideration of this application, as amended, and thanks the examiner for the courtesies extended to Applicant's representative.

Applicant respectfully requests rejoinder of withdrawn claims 1–7, 16 and 17, because these claims, as amended, recite a side wall with a rough peripheral region, as discussed in more detail, with respect to Claims 9 and 10, below.

Claim 8 was finally rejected under 35 U.S.C. § 102(b) as being anticipated by Buhse (U.S. 1,615,680), and Claims 10–13 and 15 were finally rejected as being anticipated by Aasted (U.S. 5,635,230). Claims 9 and 14 were finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Aasted in view of Buhse. While Applicant does not necessarily agree with the Office Action's opinion that "[w]afer batter always bakes to a porous finish," in the interests of securing an expedited Notice of Allowance, the claims have been amended to recite a "rough" peripheral region, which clearly distinguishes the claims over Buhse and provides contrast to the claimed substantially "smooth" surface finish of the mouth and side wall(s).

Specifically, Claims 1, 2, 9, 10, 14 and 16 have been amended to recite, more perspicuously, an outer side wall that has a rough, continuous or discontinuous region extending peripherally. Support for this amendment may be found, for example, in the Specification at Page 7 (3rd full paragraph).¹ Additionally, Claim 9 has been rewritten in independent form, and Claim 8 has been amended to depend from Claim 9. The features recited by Claim 14 have been incorporated into Claim 10, and Claim 14 has been canceled accordingly. Claims 18 and 19, depending from Claims 9 and 10, respectively, have been added; these claims recite the same features as Claim 2. No new matter has been added, and Applicant respectfully submits that none of the cited references, taken either singly or in combination, teaches or suggests all of the features recited by the pending claims.

Claims 1, 9, 10 and 16 Are Allowable Over the Cited References

The present invention provides wafer half-shells that are formed from a wafer sheet that is made by baking wafer batter in a mold that has a female half-mold and a male half-mold. The wafer sheet has upper and lower surfaces with a substantially smooth finish that is substantially free of large surface pores; in other words, the baked wafer sheet has a particular

¹ See, also, Paragraph 0037 of the Published Application.

surface finish. The individual half-shells are separated from the wafer sheet by cutting, punching, etc., carried out in a direction perpendicular to the general plane of the wall interconnecting the wafer half-shells. As the result of this operation, the wafer half-shell has a rough region that extends circumferentially, or, alternatively, a rough region that may be discontinuous. The rough surface of this "rough region" and the smooth surface finish of the annular surface of the mouth and side walls of the wafer half-shell are, of course, very different. *See*, e.g., Specification at Pages 1, 6–8, 15, etc.

Buhse discloses an ice cream cone, made from baked pastry, that includes a heavy internal coating of chocolate. *See*, e.g., Lines 1–13. Buhse's FIG. 3 depicts a baked pastry body 4, on which a circumferential contact rib 7 is provided, that includes "a chocolate coating 8 that extends not only over the interior but also over the exterior surface thereof" (Lines 60–62). While chocolate coating 8 is depicted as coating both the interior and exterior surfaces of baked pastry body 4, including circumferential contact rib 7, Buhse teaches that "it is deemed far the best practice to leave the cones with the exposed baked pastry external surfaces" (Lines 62–64). However, Buhse fails to teach or suggest a wafer half-shell that has a mouth annular surface and side wall surfaces that have a substantially smooth surface finish where the outer surface of the side wall has a rough region that extends peripherally and is recessed relative to the mouth annular surface of the half-shell, as recited by Claims 1, 9, 10 and 16. Instead, Buhse's baked pastry body 4 and circumferential contact rib 7 have the same surface finish, i.e., either chocolate coating 8 or an exposed baked pastry surface, which are, of course, substantially smooth surfaces. Consequently, Buhse fails to disclose all of the features recited by Claims 1, 9, 10 and 16. Moreover, none of the remaining references, including Aasted, cures the deficiencies of Buhse.

Claims 2, 16, 18 and 19 Are Independently Allowable Over the Cited References

Claims 2, 16, 18 and 19 recite, *inter alia*, that the rough region results from the cutting of one or more radial walls connected to the side wall of the half-shell. As discussed above, Buhse fails to teach or suggest that his longitudinal and circumferential contact ribs 6, 7 have rough surfaces, and, instead, discloses that ribs 6,7 have the same, smooth surface finish as his baked pastry body 4 (i.e., either chocolate coating 8 or an exposed baked pastry surface). Similarly, Buhse also fails to disclose that his ribs 6,7 have rough surfaces that result from cutting one or more connecting radial walls. Instead, Buhse merely teaches that his ribs 6,7

"... limit the points of contact between nested cones and prevent the chocolate interior coating of the one cone from having extended contact with the exterior of the cone inserted into the same for the purpose of close packing in shipment" (Lines 50–55). Consequently, Buhse fails to disclose all of the features recited by Claims 2, 16, 18 and 19. Moreover, none of the remaining references, including Aasted, cures the deficiencies of Buhse.

Accordingly, Claims 1, 9, 10 and 16 are allowable over the cited references. Claims 8 and 18, depending from Claim 9, and Claims 11–13, 15 and 19, depending from Claim 10, are also allowable, at least for the reasons discussed above. Additionally, Claims 2, 16, 18 and 19 are independently allowable over the cited references, for the additional reasons discussed above.

In view of the remarks presented herein, Applicant respectfully submits that this application is in condition for allowance and should now be passed to issue.

A Notice of Allowance is respectfully solicited.

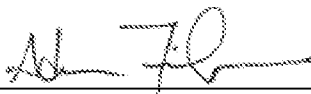
If any extension of time is required in connection with the filing of this paper and has not been requested separately, such extension is hereby requested.

The Commissioner is hereby authorized to charge any fees and to credit any overpayments that may be required by this paper under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account No. 02-2135.

Respectfully submitted,

Rothwell, Figg, Ernst & Manbeck P.C.

September 4, 2007

By:  _____

1425 K Street, N.W., Suite 800
Washington, D.C. 20005
(202) 783-6040 (voice)
(202) 783-6031 (fax)

Adam M. Treiber
Registration No. 48,000

#1428090_1